

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LabMD, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 1:14-cv-810-WSD
	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Defendant.	)	

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**PLAINTIFF’S DESIGNATION OF WITNESSES**

Plaintiff, LabMD, Inc. (“LabMD”), is prepared to submit the motion for preliminary injunction to the Court based on the evidence developed through the declarations, including exhibits, that are in the record. The Court, however, may want to hear live testimony, and Defendant, Federal Trade Commission (“FTC”), may ask to cross examine LabMD’s witnesses. Therefore, in accordance with the Court’s April 9, 2014 Amended Scheduling Order, LabMD designates the following witnesses that it intends to call at the hearing on LabMD’s motion for preliminary injunction:

- 1. Michael J. Daugherty  
Chief Executive Officer  
LabMD, Inc.  
1250 Parkwood Circle  
Unit 2201  
Atlanta, GA 30339**

Mr. Daugherty will testify about the facts set forth in the verified complaint and his declarations supporting LabMD's motion for preliminary injunction directed to and the ongoing enforcement action concerning LabMD and LabMD's data security program by FTC. His testimony also will address the irreparable harm LabMD has suffered and continues to suffer because of FTC's enforcement action. He also will offer testimony concerning the facts supporting LabMD's claims for relief under the Constitution and the Administrative Procedure Act. LabMD expects that Mr. Daugherty's direct examination will last approximately 60 minutes.

- 2. Cliff Baker  
Managing Partner  
Meditology Services  
5256 Peachtree Road, N.E.  
Suite 190  
Atlanta, GA 30341**

Mr. Baker will testify about the information in his declaration submitted to the Court in this action. His testimony will describe his experience in the field of data security and specifically data security in the health care industry. He also will

testify that, based on his experience, the data security standards described by Professor Hill, FTC's purported data security expert, would be:

- (1) confusing to HIPAA-regulated medical service providers and difficult to reconcile with the minimum requirements for compliance with HIPAA security rules;
- (2) do not place importance on the implementation costs that would be incurred by small companies such as LabMD (30 employees);
- (3) are more prescriptive than the minimum requirements for data security adopted by the U.S. Department of Health and Human Services under HIPAA; and
- (4) contradict HHS requirements in important respects.

LabMD expects that Mr. Baker's direct examination will last approximately 30 minutes.

Respectfully submitted, this 2nd day of May, 2014.

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Admitted only in Maryland.  
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Senior Vice President for Litigation and  
Counsel to Cause of Action

Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

This is to certify that, on May 2, 2014, undersigned hereby certifies that a true and correct copy of the foregoing has been filed with the U.S. District Court's CM/ECF System and that pursuant thereto, a copy of **PLAINTIFF'S DESIGNATION OF WITNESSES** has been served upon the following persons by electronic mail:

Lauren E. Fascett, Esq.  
Perham Gorji, Esq.  
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U.S. Department of Justice  
Civil Division  
Consumer Protection Branch  
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This 2nd day of May, 2014.

/s/ William D. Meyer  
Counsel for Plaintiff